

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 866 of 1998

in

SPECIAL CIVIL APPLICATION No 3509 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KV VADODARIA

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Appellants
MR SP HASURKAR for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR RJ OZA for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 08/12/98

ORAL JUDGEMENT

(Per : C. K. Thakkar, J.)

#. Admitted. Mr.S.P.Hasurkar, learned AGP for the respondent No.1 and Mr. R.J.Oza, learned counsel for the respondent No.3 appear and waive service of notice of admission. This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No. 3509 of 1998 on 3rd July, 1998. The learned Single Judge admitted the petition by issuing Rule thereon and passed the order, which reads as under;

" I have heard learned counsel for the parties on the question of interim relief. The question involved in the present Special Civil Application is whether fixing up of outer age limit for recruitment on the post of Deputy Director, Agriculture, is irrational keeping in view the fact that the required educational qualifications M.Sc. with five years' experience and Ph.D.with three years' experience.It is stated that the matter is also under consideration with the government. Be that as it may, the fact remains that the petitioner is not eligible under the existing rules. In view of this, no interim relief can be granted. The prayer for interim relief is declined."

#. The case of the appellant was that the Gujarat Public Service Commission (for short 'GPSC') - respondent No.3 herein-published an advertisement for filling up post of Deputy Director of Agriculture. The appellants applied for the said post in accordance with the provisions of Deputy Director of Agricultural and District Agricultural Officers (except in Gandhinagar and Dangs districts) Recruitment Rules, 1987 framed under the provision to Article 309 of the Constitution of India. Rule 2 provides three mode of recruitment;

(1) by promotion of a person of proved merits
and efficiency from amongst the
persons...;

(2) By transfer on deputation; and

(3) By direct selection

#. So far as direct selection is concerned, Rule 3 is material which reads as under;

"3. To be eligible for appointment by direct

selection to the posts mentioned in rule 2, a candidate shall -

(a) not be more than 30 years of age,

(b) possess-

(i) (a) a Ph.D. degree in any branch of Agriculture of University, and

(b) about three years' experience in Agriculture Research or Agricultural Education or Agricultural Extension Service or Soil Conservation or Agricultural Engineering or a combined experience of about three years in Agricultural Research, Agricultural Education, Agricultural Extension Service, Soil Conservation and Agricultural Engineering in a responsible capacity after obtaining the Doctorate Degree; or

(ii) (a) a post-graduate degree with second class in any branch of Agriculture of a recognized University, and

(b) about five years' experience in Agricultural Research or Agricultural Education or Agricultural Extension Service or Soil Conservation or Agricultural Research, Agricultural Education, Agricultural Extension Service, Soil Conservation and Agricultural Engineering;

(c) possess adequate knowledge of Gujarati Hindi or both.

Provided that the upper age limit may be relaxed in favour of a candidate already in the service of the Government of Gujarat in accordance with the provisions of Gujarat Civil Service Classification and Recruitment (General) Rules, 1967.

#. It was contended before the learned Single Judge that if Clause (a) of the Rule 3 is interpreted to mean maximum age limit of 30 years, the Rule will not become workable and must be held ultra vires. In fact, constitutional validity of the Rule is challenged before the learned Single Judge. The learned Single Judge found substance in the contention and has admitted the petition. He, however, did not grant interim relief.

#. Being aggrieved by the said order refusing interim relief, the appellant preferred this LPA. In CA No.6880 of 1998, interim relief was prayed and the Division Bench passed the following order on August 13, 1998.

"The applicants have submitted applications for selection and appointment to the post of Deputy Director of Agriculture. The age limit for the candidates was fixed as 30 years. The applications of these applicants have been rejected on the ground that they are over-aged.

We heard the applicants' counsel and Mr.R.J.Oza, learned counsel for the GPSC.

Having regard to the facts and circumstances of the case, we direct the 3rd respondent to permit these applicant to participate in the proposed interview for selection of Deputy Director of Agriculture. The results of the applicants shall not be published and shall be kept in a sealed cover. The applicants are allowed to participate in the interview subject to the result of Special Civil Application No. 3509 of 1998. Direct service is permitted. "

#. We have heard the parties. In our opinion, it would be in the interest of justice if we may not express final opinion on merits when the matter is pending before the learned Single Judge. When the learned Single Judge was of the view that the matter required consideration and Rule was issued, against refusal to grant interim relief, the Division Bench at the admission stage was of the view that the respondent No.3 GPSC should be directed to allow the appellants to participate in the proposed interview for selection of Deputy Director of Agriculture and ordered that the result of the appellants should be kept in seal cover, it would be in the interest of justice if such limited interim relief is ordered to be continued till final disposal of the main petition.

#. It appears that though Rule is issued, it is not made returnable., It was submitted by Mr.Oza, learned counsel for GPSC that if the Rule will not be heard in near future and the petition will not be disposed of, it may create problems for Commission as well as for other candidates. The counsel are at liberty to move the learned Single Judge for expeditious disposal of Special Civil Application. We may state that we are not expressing any opinion on the merits of the matter.

Letters Patent Appeal deserves to be allowed to the above extent. In the facts and circumstances of the case, no order as to costs. Direct service permitted.

(C.K.Thakkar,J.)

Date : 8-12-1998 (A.L.Dave, J.)

*KAILASH